

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: August 21, 2007)

DO NOT PUBLISH

CATHY S. ANTHONY,)	
natural mother of and guardian ad litem for her son,)	
NOAH A. ANTHONY,)	
)	
Petitioner,)	
)	
v.)	No. 06-0091V
)	Attorney's Fees; Attorney's Costs;
SECRETARY OF)	Personal Expenses
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION ON ATTORNEY'S FEES AND ATTORNEY'S COSTS¹

Petitioner, Cathy S. Anthony (Ms. Anthony), as guardian ad litem for her son, Noah A. Anthony (Noah), seeks an award of \$22,487.06 in attorney's fees and attorney's costs for an action that she pursued under the National Vaccine Injury Compensation Program (Program).² *See generally* Application for Fees and Cost [sic] (Fee Petition), filed July 24, 2007. Ms. Anthony represents that she did not incur any personal expenses as defined by General Order No. 9. *See* Supplement to Application for Fees and Costs (Statement), filed August 15, 2007. Respondent does not object. *See* Response to Application for Attorney's Fees and Costs (Response), filed August 7, 2007.

Ms. Anthony did not receive Program compensation. Nevertheless, the statute enacting the Program accords discretion to the special master to "award an amount of compensation to cover" Ms.

¹ The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

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Anthony's "reasonable attorneys' fees and other costs" as long as "the special master or court determines that" Ms. Anthony possessed "a reasonable basis for the claim" and that Ms. Anthony filed the petition "in good faith." § 300aa-15(e)(1); *see, e.g., Di Roma v. Secretary of HHS*, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). As the United States Supreme Court has cautioned in cases involving other fee-shifting schemes, the special master's "discretion is not without limit." *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989). Thus, absent "special circumstances," the special master "should ordinarily" award attorneys' fees and costs to an unsuccessful petitioner. *Id.*, citing *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

The special master has considered carefully Ms. Anthony's Fee Petition. The special master determines that Ms. Anthony's Fee Petition is appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Ms. Anthony's favor for \$22,487.06 in attorney's fees and attorney's costs. The judgment shall reflect that Ms. Anthony's attorney of record, Thomas P. Gallagher, Esq. (Mr. Gallagher), may collect \$22,487.06 from Ms. Anthony. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

The clerk of court shall send Ms. Anthony's copy of this decision to Ms. Anthony by overnight express delivery.

John F. Edwards
Special Master